

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION**

MDL No. 6:20-2977-RJS-CMR

Hon. Robert J. Shelby

Hon. Cecilia M. Romero

**PLAINTIFFS' MOTION TO PROVISIONALLY
FILE DOCUMENT UNDER SEAL**

Plaintiffs¹ respectfully move this Court pursuant to LCvR 79.1 for an Order provisionally sealing Plaintiffs' Status Report Regarding Non-Party House of Raeford Farms, Inc.'s Compliance with Subpoenas. Counsel for House of Raeford Farms, Inc. ("HRF") asserts that the status report contains confidential information, including the numbers of documents that hit on search terms and were produced. Plaintiffs' position is that the status report does not contain any confidential information.

"There is a strong presumption of public access regarding judicial records." *AG Equip. Co. v. AIG Life Ins., Co.*, No. 07-cv-556, 2009 WL 763494, at *1 (N.D. Okla. Mar. 19, 2009). "[T]he parties cannot overcome the presumption against sealing judicial records simply by pointing out that the records are subject to a protective order[,"] but "must articulate a real and substantial interest that justifies depriving the public of access to the records that inform [courts'] decision making process." *Helm v. Kansas*, 656 F.3d 1277, 1292-93 (10th Cir. 2011). "In ruling on a motion to seal and exercising its discretion, the court must consider the relevant fact and circumstances and balance the public's right of access, which is presumed paramount, with the parties' interests

¹ "Plaintiffs" includes Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles Weaver, Melissa Weaver, Marc McEntire, Karen McEntire, and Mitchell Mason, on behalf of themselves and all others similarly situated.

in sealing the record of a portion thereof.” *Garcia v. Tyson Foods, Inc.*, No. 06-cv-2198, 2010 WL 3584462, at *1 (D. Kan. Sept. 13, 2010). The burden is on the party seeking to seal the document to “establish a harm sufficient to overcome the public’s right of access to judicial records.” *Id.*

Plaintiffs believe that no information in the status report comes close to being confidential business information, nor to satisfying the stringent requirements for continued sealing. Plaintiffs communicated that position to counsel for HRF, who nevertheless maintained the position that the status report contains confidential information. It is HRF’s burden to show that these documents deserve confidential treatment and to overcome the paramount interest of the public in access to judicial documents. Plaintiffs file this motion to provisionally seal the documents out of an abundance of caution, only to allow HRF an opportunity to satisfy this burden before they are placed on the public docket. A copy of this filing will be sent to counsel for HRF when it is filed.

A proposed order provisionally granting leave to file the exhibits under seal is filed with this motion.

Dated: May 17, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2021, I electronically transmitted a true and correct copy of the foregoing document to the Clerk of Court for filing using the CM/ECF system, which will send notification of such filing to all counsel of record, and that I caused an email to be sent to counsel for House of Raeford Farms, Inc.

/s/ Gary I Smith, Jr.
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